

COMMUNITY VOICES

Hope for those hurt by nursing-home neglect

At Chain Cohn Clark, we have spent decades representing the elderly and their families in cases against nursing homes. For many families, the decision to put an elderly loved one into a skilled nursing facility is one of the most difficult decisions they will make as a family. To later find that their loved one has been subjected to abuse, or that their care needs have been woefully neglected, is devastating.

Unfortunately, for the past 47 years, the damages that can be awarded to an elderly person subjected to neglectful care, or to their family if that neglectful care resulted in the death of their loved one, have been capped in California by the Medical Injury Compensation Reform Act (MICRA).

Since California enacted the MICRA law, individuals who suffered injuries and/or death due to nursing home neglect had the potential of their damages in a lawsuit being capped at \$250,000. This meant that where the allegations did not rise to the level of elder or dependent adult abuse and neglect, we have had to be the bear the burden of informing our clients that the maximum recovery for their case was limited to \$250,000—even in instances in which they have lost a loved one. Imagine having to look a widow in the eye and tell her that the law only allows her to recover a maximum of \$250,000 after the death of her spouse, which was a result of the nursing home's failure to provide care. It is a tough pill to swallow.

However, the Legislature recently

unanimously agreed to raise the cap on damages in those cases where the conduct does not rise to level of elder or dependent adult abuse and neglect. Once Gov. Gavin Newsom signs this into law (he is expected to do by June 30), the limit will increase from \$250,000 to \$350,000 for injured parties and \$500,000 for relatives of those who have died, effective Jan. 1. These amounts will increase annually for the next 10 years.

While the Legislature has enacted other laws to protect this particularly vulnerable population of individuals who are at the mercy of the nursing homes to care for their daily needs, it is a struggle to reach those protections. Some common examples of cases of abuse and neglect are bed sores that can become infected, falls and fall-related injuries/death, malnutrition and dehydration, withholding of medications and much more. These types of injuries and neglect are almost always the result of insufficient staffing in the nursing home. Too little staff means those staff on the floor are overworked and overburdened. Under such circumstances, they cannot provide quality, appropriate care. In handling these cases, we have seen time and again that nursing homes put profits over patient care, as less staff equals greater profits. After a resident falls victim to this intentional decision to place profits over patients, the nursing homes then attempt to hide behind the financial protections and limits instituted by MICRA.

Although there are no caps on damages in cases of actual elder abuse, proving elder abuse is often a difficult task. The far more common case is one based on negligence, for the nursing home's failure to provide appropriate care, such as the regular monitoring of patient to ensure they do not develop a bed sore. By raising the cap on damages that has been in place for nearly 50 years, the Legislature enables families to better hold nursing homes accountable.

While no amount of money will bring a loved one back to life and it is impossible to place a value on human life or a person's pain and suffering, this change in the law is at least a step in the right direction towards justice. It not only recognizes the need to hold these providers accountable in a way that impacts them financially so that the nursing home owners will feel the burden of their decisions and actions, but also provides our clients with the solace that the Legislature has finally recognized the need for change and accountability.

Matt Clark and Tanya Alsheikh are accident and injury lawyers with the law firm Chain | Cohn | Clark, and also focus on elder and dependent adult abuse and neglect cases.



MATT CLARK



TANYA ALSHEIKH

America's EV ambitions need American mines

In the wake of Russia's invasion of Ukraine, electric vehicles (EVs) have emerged as a critical answer to energy insecurity. EVs offer an important tool to disentangle the U.S. from the geopolitics of the oil barrel and to insulate American consumers from volatility at the gas pump.

Electric vehicles also hold the promise of putting a significant dent in the war chest of petro-dictators. While sanctions on Russia have proven biting, high oil prices mean Moscow continues to earn \$20 billion per month on oil sales.

There's a growing consensus that the EV moment has arrived. The auto industry is sprinting towards an EV future, and consumers are following with wait-lists for new EVs. Yet despite that momentum—and what it appears to portend for climate and energy security goals—the EV deployment checkpoint is emerging that policymakers are only beginning to grapple with.

Right now, there simply aren't enough battery materials being produced to meet the auto industry's voracious appetite. Carmakers are warning of even greater frequency that the coming battery material shortfall could stop the EV revolution in its tracks.

RJ Scaringe, CEO of EV start-up Rivian, recently said the auto industry's current semiconductor problems "are a small appetizer to what we are about to feel in battery cells over the next two decades." From Rivian and Tesla, to Ford and GM, this concern over material shortfalls is universal.

The battery supply chain is already facing the pinch of rising material prices as the gap between demand and supply widens. Battery pack costs—which had been on a long downward trend—are now rising. That's pushing up vehicle costs right when automakers and climate policy need them to continue to fall. Metals accounted for 40 percent of battery costs in 2015. Today, they account for 80 percent. Where the price of these metals goes, so does the cost of batteries and EVs.

Paying far more for battery metals might be a best-case scenario for some automakers. But with demand exploding, and supply not keeping up, it's likely that automakers are going to be millions of batteries short in the years ahead, as ambition outpaces a supply chain struggling to keep up. And the supply chain that does exist is completely dominated by China.

With U.S. mineral import over-reliance already at an alarming level, and investment in mineral demand growing far faster than supply, the U.S. is poised to trade Moscow's and Tehran's influence over the oil market for Beijing's dominance of mineral supply chains.

The Biden administration recognizes the scale of the minerals challenge and has taken important steps to begin to address it—including the use of the Defense Production Act to boost mineral production and processing. But a unified, whole-of-government minerals strategy does not yet exist. Worse still, there are policymakers determined to raise new barriers to domestic mineral production despite the urgent need to reinvigorate this pillar of our industrial base.

Led by House Natural Resources Committee Chair Raul Grijalva, D-Arizona, some lawmakers want to upend the nation's General Mining Law. The proposed sweeping taxes, fees and duplicative regulations in this legislative effort come from a tired playbook that is astonishingly out-of-sync with the moment.

There is a need for mining policy reform, but that reform should serve to reduce barriers to domestic production—not raise them. As demand for minerals explodes—not just for batteries but for a range of technologies to underpin this energy transition—it's critically important that the U.S. shapes its mining policy to respond to the urgency of the moment.

While it takes just two years to get a new battery megafactory up and running, it regularly takes a decade or more to permit new U.S. mines—if they are approved at all.

The U.S. can build a secure, reliable mineral supply chain under existing world-leading environmental and labor standards that underpin EV deployment. But it won't happen if we don't rise to the moment and recognize the intersection of mining policy with our energy security goals. Building our electric future begins with mining it.

Rich Nolan is president and CEO of the National Mining Association.

HOW TO WRITE US

Letters to the editor should address a single topic in no more than 250 words and be signed by just one person; the author's true first and last names, address and telephone number must accompany the letter, but only the author's name and city will be printed. Community Voices pieces should be no more than 650 words and also must include the author's photograph and a short biography. All submissions are subject to editing for length, clarity and appropriate content. We reserve the right to decline publication. The preferred method of submission is via our website: bakersfield.com/opinion. Letters also may be emailed to opinion@bakersfield.com.



COMMUNITY VOICES

'Tough love' teaches us not to take things for granted

I can't remember when family became important to me.

Maybe its genesis was when I spent a year at Pacific Military Academy in Culver City after I turned 5 years old. Yep, if you deny a 5-year-old his family support, that could very well embed a permanent remembrance of taking things for granted and then losing them. An important lesson to learn at any age.

In retrospect, I view that experience as an example of "tough love" from my parents. I don't think I ever recovered from the terrible 2's. "By 4 years old, I hit the big time, pilfering my father's 5-cent Van Dyke cigars and inviting my unary friends—Francis Ballard, for one—to join me in smoking. Although this article isn't about me, I am sourcing my own experiences to find the blind spot that allows us to take

things for granted that have most often been provided or given to us through no effort of our own.

Life is replete with kindnesses that are provided for us, such as loving parents, doting grandparents, caregiving siblings, free education, loyal friends, good health and the opportunity to choose what we want to make of our own life.

We are admonished not to take these gifts for granted, but seldom are we told what to do when we recognize or experience a gift that is taken "off the table."

I suggest that we must first take a personal inventory of all benefits that we haven't earned. That process, by itself, will lead us to the next step of motivating us to respect and honor those people and events that have enhanced our life, including planet Earth, our home.

We are the recipients of gifts of nature, with its rich soil to grow life-sustaining food, clear clean water that is essential to life itself, trees that create oxygen and absorb carbon dioxide and even a democratic form of government that provides the opportunity and personal freedom (unfortunately not in all cases, yet) to allow us to maximize our potential.

My experience as a "reformed" 5-year-old has taught me to appreciate those things that I would otherwise have taken for granted.

While looking at my graduation photo from Pacific Military, I noticed that I had sergeant stripes on my uniform. In two years of army service, I never advanced above corporal. Imagine that: At 5 years old, I outranked myself at age 24.

If not now, when?

Phil Rudnick is a proud resident of Bakersfield.



PHIL RUDNICK